

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL LEON POWELL,

Plaintiff,

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Case No. 1:19-cv-627

HON. JANE M. BECKERING

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 against several Defendants. Defendant Marshall moved for summary judgment in April 2021, arguing that Plaintiff had not exhausted his administrative remedies for the claims he alleged against her. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court grant Defendant's motion. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation, to which Defendant filed a response. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

The Magistrate Judge determined that Plaintiff failed to properly pursue either of the two relevant grievances through all three steps of the grievance process: Grievance ECF-19-07-1529-28e ("Grievance 1529") was rejected as untimely at Step III, and Grievance ECF-19-07-1515-28c

(“Grievance 1515”) was rejected at Step I for asserting multiple issues in a single grievance (R&R, ECF No. 35 at PageID.202).

In his objections, Plaintiff argues that the Magistrate Judge erred in determining that he had not met his burden on the question of exhaustion where the Magistrate Judge did not consider his response in opposition to Defendant’s motion for summary judgment (Pl. Obj., ECF No. 38 at PageID.212). Plaintiff indicates in his objections that he described in the response brief how interference with his use of the mail system prevented him from timely submitting his Step III grievance (Pl. Obj., ECF No. 38 at PageID.213; Pl. Resp., ECF No. 34 at PageID.191). Specifically, Plaintiff asserts that he submitted the grievance for mailing on September 6, 2019 yet “the prison authorities did not actually place it in the mail until September 9, 2019” (Pl. Obj., ECF No. 38 at PageID.212). Regarding Grievance 1515, Plaintiff asserts that Defendants’ documentation that this grievance was rejected is “fraudulent” (Pl. Obj., ECF No. 38 at PageID.213). Plaintiff emphasizes that he was “interviewed for this grievance” (Pl. Resp., ECF No. 34 at PageID.192).

The Magistrate Judge’s Report and Recommendation, issued August 23, 2021, failed to acknowledge the response Plaintiff filed on August 13, 2021¹ (ECF No. 34). However, Plaintiff’s arguments fail to demonstrate that a result different from the Magistrate Judge’s recommendation is warranted. First, as Defendant points out (ECF No. 40 at PageID.228), Plaintiff does not provide any argument or evidence (in either his response or objection) as to when he received the Step II response, nor does Plaintiff attribute any delay for his Step III mailing to an alleged delayed receipt of his Step II response; instead, Plaintiff merely claims that the Step III grievance was untimely filed because Defendants interfered with his attempt to send out the Step III grievance on Friday,

¹ Plaintiff’s response was untimely filed, well beyond the May 21, 2021 deadline, and Plaintiff did not seek leave to file his untimely response.

September 6, 2019, by not mailing it until Monday, September 9, 2019. Second, as Defendant also points out (*id.* at PageID.229), the fact that Plaintiff was interviewed about Grievance 1515 does not change the Magistrate Judge's exhaustion analysis. In short, Plaintiff's submissions fail to identify a factual dispute on the question of exhaustion. Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court.

Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 38) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 35) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant Marshall's Motion for Summary Judgment (ECF No. 27) is GRANTED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: March 21, 2022

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge